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May 7, 2020

VIA ECF

Honorable Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al.*, No. 19-cv-00660 (E.D.N.Y.)

Dear Judge Brodie:

I write to update the Court on the parties' ongoing efforts to address several of the important issues raised in this litigation through mediation.

I. Background

Since our May 1, 2020 Telephone Status Conference with the Court, I have spoken with counsel for Federal Defenders, Inc., along with their client representatives and have had a similar separate conversation with counsel for the

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government and representatives of the Metropolitan Detention Center (“MDC”) and Metropolitan Correctional Center (“MCC”).¹

This week, my conversations with the Federal Defenders and the Government have focused on the following topics:

1. The execution of the new protocol for scheduling and placing attorney-client phone calls at the MDC and the MCC.
2. Privacy concerns relating to legal telephone calls at both facilities.
3. Protocols for ensuring inmates receive telephone calls if and when they are placed on isolation units due to coronavirus exposure.
4. Efforts to improve access to videoconferencing equipment at both institutions.
5. Steps BOP could take to reinitiate in-person legal visits in the future.
6. The backlog of unfacilitated legal calls at both institutions for the period between March 13, 2020 and April 20, 2020.

Once again, my discussions with the parties have been productive. Each side understands the important issues at stake in this litigation and are working in good faith and under difficult circumstances to address these issues.

II. Telephonic Contact

This was the third week in which the parties scheduled and facilitated legal phone calls under the Court Protocol for Attorney Calls and Teleconference Hearings. Pursuant to the Protocol, attorney client calls were scheduled by Federal Defenders for afternoon slots of one-half hour each from 12pm to 3pm at the MDC and 1 to 3:30 pm at the MCC.

A. MCC

For the second week in a row, based on the institution’s call logs and Federal Defender data, telephonic contact at the MCC went well this week. According to the institution’s log, legal calls scheduled Monday through Wednesday of this week have all been completed.

¹ With Federal Defenders, Inc.: May 6, 2020; with MCC and MDC: May 7, 2020.

B. MDC

According to the information I have from MDC and Federal Defenders, there were 139 call requests since the last May 1, 2020 Status Conference. 121 of those have been completed, fifteen were attempted, and three were cancelled or rescheduled at the attorney's request. In addition, the MDC continues to work to schedule additional backlog calls with that backlog substantially complete.

The majority of the calls were completed without issue. Scheduling continues to be a challenge, particularly when more calls are requested than can be accommodated within the afternoon schedule. Indeed, two days this week saw a list of requests that well exceeded the afternoon schedule. Both parties have agreed that utilizing the morning hours can provide a solution to this issue. I am working with the parties to finalize a plan whereby Federal Defenders can identify calls that need not be thirty minutes long and that have the flexibility to be scheduled in the morning hours, subject of course to the constraints imposed by the court schedule.

Privacy continues to be a concern for certain MDC calls, particularly in the Special Housing Unit ("SHU"). In one instance last week an inmate took his legal call in a private room, but with another inmate in the room awaiting a later call. In an instance earlier this week, an inmate in SHU was provided a legal call in his cell with his roommate present. I have discussed this issue with the MDC with a view towards investigation and accountability. The MDC has committed to looking into all instances where an inmate is not afforded privacy for a legal call and taking appropriate action. In addition to in person training, the MDC has provided written guidance from the Warden regarding, *inter alia*, the importance of affording inmates privacy for legal calls. This guidance will also be posted in the SHU.

Last week the parties discussed a legal call provided from an office where the door was left open to provide visual observation. The MDC has advised that this office will no longer be used and another office, with a windowed door, will be used for calls in that unit.

III. Videoconferencing

A. MCC

According to MCC's records, there were seven videoconferences scheduled to take place this week. Five were completed as scheduled. One was attempted, but the attorney faced technical difficulties and will reschedule the conference. The other appears to have been attempted, but lasted only four minutes. We are following up with the institution for more information on this call.

B. MDC

According to MDC's records, there were six videoconferences scheduled to take place this week under the existing system. Four went forward as scheduled. Two were cancelled at the attorneys' requests. One of these will be rescheduled.

The MDC anticipates being able to utilize the new videoconferencing equipment later next week, with a test call held prior to that. Federal Defenders has requested an MDC IT point of contact for counsel who may experience technical issues with the videoconferences. I am aware that this issue has also been discussed with Chief Magistrate Judge Pollak. The MDC has indicated that it can provide an email point of contact for technical issues that will forward an urgent email to both the Computer Services and Legal Departments. While it was also proposed that counsel could call the main switchboard for assistance, I believe the email system will provide for faster assistance.

IV. Isolation

I continue to review the impact of an inmate's isolation status on their ability to access legal calls. The Court requested a review of an inmate's situation discussed at last week's conference. Counsel noted they were able to have a scheduled call after their client left isolation status, but the inmate had not had a call during his isolation status. A review of the inmate's call logs did not reflect a request for a scheduled legal call while he was still on isolation status. As previous mediation reports have noted, other inmates in isolation were afforded scheduled legal calls. *See* ECF No. 54 at 5.

V. The Status of In-Person Legal Visits

I have begun discussions with both parties about the issue of in person visits. Both parties have begun to consider the relevant issues. The current BOP guidance curtailing in person visits extends through May 18, 2020. I will continue my discussions and will also speak with the institution's leadership on this issue.

Respectfully,

/s/ Loretta E. Lynch
Loretta E. Lynch

cc: Sean Hecker, Kaplan, Hecker & Fink
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